

ORDINANCE NO. __, 2005
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 13 OF THE CITY CODE TO ADD
A NEW ARTICLE III CONCERNING DISCRIMINATION BASED ON
IMMIGRATION STATUS

WHEREAS, Fort Collins is a city striving to respect the rights of, and provide equal services to, all individuals regardless of race, ethnicity, or immigration status; and

WHEREAS, Fort Collins is a city striving to promote community safety, protect witnesses and victims, prevent racial profiling and profiling based on immigration status, prevent pretextual arrests, promote tolerance, and allow people to do their jobs; and

WHEREAS, recent terrorist attacks and the resultant tightening of security may have left immigrant communities afraid to access benefits to which they are entitled, for fear of being reported to the United States Immigration and Customs Enforcement (formerly, INS); and

WHEREAS, this Ordinance is consistent with federal laws regarding localities' responsibilities to cooperate with federal immigration authorities; and

WHEREAS, this Ordinance is an effective way to guide city officials and employees in adhering to federal law while protecting the safety and health of all members of the Fort Collins community.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

Section 1. That Chapter 13 of the City Code is hereby amended by adding thereto a new Article III to read as follows:

ARTICLE III. DISCRIMINATION BASED ON IMMIGRATION STATUS

Sec. 13-30. Discrimination based on immigration status prohibited.

(a) For the purposes of this section, the term "city employee" shall mean all City of Fort Collins employees, elected city officials, authorized city volunteers, and members of city boards and commissions.

(b) No city employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person, while the city employee is acting within the scope of his or her employment with the city. As used in this subsection, "any person" shall include, but not be limited to, victims and witnesses of crime.

(c) No city employee shall use city resources or personnel for the purpose of detecting or apprehending persons whose only violation of law is or may be being an undocumented alien, being out of immigration status, or illegally residing in the United States.

(d) Notwithstanding the prohibitions set forth in subsections (b) and (c) above, the following activities of city employees are expressly permitted and such activities shall not constitute a violation of this section:

- (1) Immigration status information may be solicited when specifically required by any city, state, or federal law or program guidelines as a condition of eligibility for the service sought. City employees are to carry out their regular duties for the purpose of administering general services and programs.
- (2) Immigration status information may be solicited for the purpose of completing I-9 forms, and, when relevant, in making hiring and payroll withholding decisions. City employees may complete I-9 forms, may question a person regarding the I-9 form and documents supporting the I-9 form, and may allow federal authorities to audit the I-9 forms as allowed by law. City employees shall comply with any properly issued subpoena for the production of documents or witnesses, even if related to immigration issues or other security issues.
- (3) A City employee may ask a person for identification, if such inquiry is reasonably related to the performance of the employee's duties, even if the person's response to the inquiry is to produce immigration status information.
- (4) Immigration status information may be solicited when it is relevant to threatened or actual civil litigation, or administrative proceedings.
- (5) Immigration status information may be solicited of suspects only when it is essential to the investigation or prosecution of a violation of a criminal statute. For the purposes of this exception, "criminal statute" shall mean a felony or misdemeanor offense as defined by federal, state or local law. "Criminal statute" shall not mean a petty offense or civil traffic infraction.
- (6) City employees may inform persons of the possible immigration consequences of a guilty plea.

- (7) Immigration status information may be solicited by law enforcement, prosecuting, or court employees when reasonably necessary for bonding, conditional release, warrant, or arrest, or when relevant to plea negotiations, examination or cross examination at trial or hearing, sentencing decisions, or other court proceedings.
- (8) City employees performing public safety functions may assist federal law enforcement officers in the investigation of criminal activity involving individuals present in the United States who may also be in violation of federal immigration laws, but must assist in compliance with this section.

(e) Where presentation of a state driver's license is customarily accepted as adequate evidence of identity, a city employee shall, to the extent permitted by state and federal law¹, accept identification in the form of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular, and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a Colorado driver's license. This provision shall not apply when federal, state, or local law requires a higher level of identification.

(f) Upon the request of the person being questioned, a City employee who is lawfully questioning a person about the person's immigration status shall provide the person with the reasons for requesting such information.

Section 2. That the City Manager shall implement an ongoing training and educational program to inform city employees and members of the community regarding the requirements of this Ordinance.

Introduced, considered favorably on first reading, and ordered published this ___ day of _____, 2005, and to be presented for final passage on the ___ day of _____, A.D. 2005.

Mayor

ATTEST:

City Clerk

¹See, for example, section 24-72.1-101, et seq., Colorado Revised Statutes, regarding identification required in the provision of city services and in the issuance of city licenses, permits, and official documents.

Passed and adopted on final reading this ____ day of _____, A.D. 2005.

Mayor

ATTEST:

City Clerk